

A. G. Contract No.: KR04-1726TRN  
ADOT ECS File No.: JPA 04-034  
Project No.: STP-060-B(004)A  
Project: Water and Sewer Lines  
Section: US 60, MP 111.31 – 112.80  
TRACS No.: H5958 01C  
Budget Source Item No.: LB & I Funds

## INTERGOVERNMENTAL AGREEMENT

BETWEEN  
THE STATE OF ARIZONA  
AND  
TOWN OF WICKENBURG, ARIZONA

THIS AGREEMENT is entered into this date July 7, 2005, pursuant to Arizona Revised Statutes, § 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the TOWN OF WICKENBURG, acting by and through its MAYOR and TOWN COUNCIL (the "Town")

### I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

2. The Town is empowered by Arizona Revised Statutes § 48-572 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the Town.

3. The State has a roadway-widening project on US 60 through the Town. The Town has proposed extending its existing water and sewer facility project, ("Town's Project Elements"), which affects the State's construction of the roadway-widening project within the State's right-of-way (State's project"). The State and the Town agree that it is in the best interest of the parties for the State to include the Town's design plans into the State's construction documents of its roadway-widening project, which will extend service providing water and sewer connections to the State's Wickenburg Maintenance Facility and adjacent properties, hereinafter referred to as the "Project". (All of the State's Wickenburg Maintenance Facility buildings currently connected to septic and the State's new Wickenburg construction modular building will be connected to the new sewer, as part of this Project.)

4. The parties hereto agree to and acknowledge the following conditions: a) The estimated monetary amounts referenced in this Agreement are subject to change and can change substantially before completion of the Project; b) The parties shall perform their responsibilities consistent with this Agreement; and c) Any change or modification to the Project will only occur with the mutual written consent of the parties.

THEREFORE, in consideration of the mutual Agreements expressed herein, it is agreed as follows:

27604  
Filed with the Secretary of State  
Date Filed: 7/7/05  
Janice K. Brewer  
Secretary of State  
By: Harri Pessierillo

## **II. SCOPE OF WORK**

### **1. The State shall:**

a. Agree to be the authorized agent of the Town's Project elements for and on behalf of the Town.

b. Upon execution of this Agreement and after the bids for the State's project are opened, invoice the Town for its proportionate share of the actual Town's Project elements' construction costs, in an amount currently estimated at \$562,000.00. The total construction costs of the Town's Project elements are currently estimated at \$662,000.00.

c. Be responsible for the State's proportionate share of the construction costs of the Project currently estimated at \$662,000.00 and in a total amount not to exceed \$100,000.00. (The State's proportionate share is based upon the estimate to convert the Wickenburg Maintenance Yard from a septic system to a gravity flow system, connected to the Town's new sewer.)

d. Review and provide comments to the Town's design documents for the Town's Project elements.

e. Incorporate the Town's design documents for the Town's Project elements into the State's construction documents for the Project. Call for bids and award one or more construction contract(s) for the Project, administer same and make all payments to the contractor(s). Cause the Project's contractor to add that the Town be named as "additionally insured" by the contractor's liability insurance for the Project. Confer with the Town on any construction modifications to the Town's elements of the Project.

f. Utilize the services of the Town's design consultant for construction inspection, as needed, and reimburse the Town for said consultant's approved invoices. Upon completion of the Project, coordinate final inspection with the Town for approval and acceptance of the Town's Project elements.

g. Upon completion and acceptance of the Town's Project elements by the State, on behalf of the parties hereto, invoice or reimburse the Town for the difference between the amount paid by the Town and the actual construction costs for the Town's Project elements plus any additional design costs incurred for the Town's Project elements that are included in the Project.

### **2. The Town shall:**

a. By execution of this Agreement, designate the State as the authorized agent for the Town's Project elements for and on behalf of the Town.

b. Upon execution of this Agreement and within thirty-days (30) of receipt of an invoice from the State, remit to the State an amount currently estimated at \$562,000.00, for the Town's proportionate share of the actual construction costs of the Town's Project elements. The total construction costs of the Town's Project elements are currently estimated at \$662,000.00.

c. Provide to the State design plans, specifications and such other documents and services required for construction bidding and construction of the Town's Project elements. Incorporate or resolve State's review comments.

d. Be responsible for any contractor claims for extra compensation due to delays and any additional construction contract modifications relative to the Town's Project elements of the Project.

e. Upon completion and acceptance of the Project reimburse the State within thirty-days (30) after receipt of an invoice, any difference between the amount paid by the Town and the actual construction costs for the Town's Project elements plus any additional design costs incurred for the Town's Project elements that are included in the Project.

f. Provide general over site by its Public Works Department of the construction of the Town's project elements and upon completion and acceptance of the Town's Project elements, the Town will accept ownership and maintenance responsibilities for the new water and sewer.

### **III. MISCELLANEOUS PROVISIONS**

1. This Agreement shall remain in force and effect until completion of the work contemplated herein and reimbursements; provided, however, that this Agreement, except any provisions herein for maintenance, which shall be perpetual, may be cancelled at any time prior to award of the construction Project, with written notice to the other party.

2. In the event of termination of this Agreement by either Party, it is understood by the Parties that the Town is responsible for its proportionate share of the costs associated with the Town's Project elements as described herein. Said costs incurred by the State up to time of termination will be deducted from the Town's payment of its estimated proportionate share and prior to returning any unused funds to the Town, and that the Town will accept its responsibility for the operation and maintenance of the Project.

3. The State assumes no financial obligation or liability under this Agreement in association with the design, construction and maintenance of the Town's Project elements' work, requested by the Town, and provided for herein. The Town assumes full responsibility for the design, construction and maintenance of the Town's Project elements herein and shall be responsible and liable to the extent of its involvement in the design, construction and maintenance of the Town's Project elements. With respect to design, construction and maintenance of the Town's Project elements, the Town hereby agrees to save and hold harmless and indemnify from loss the State, and its departments, agencies, officers or employees from any and all costs and/or damage incurred by the design, construction and maintenance of the Town's Project elements and any other damage to any person or property whatsoever, which is caused by any involvement by the Town in the design, construction and maintenance of the Town's Project elements. In the event that any problems occur with the design, construction and maintenance, a portion of the costs incurred by the State or any of its departments, agencies, officers or employees shall include those cross related to any action, court costs, and/or expenses of litigation or attorneys' fees relating to the design, construction and maintenance of the Town's Project elements.

4. Each party (as "Indemnitor") agrees to indemnify, defend, save and hold harmless the other party (as "Indemnitee") from and against any and all claims, losses, liability, costs, or expenses including reasonable attorney's fees, hereinafter collectively referred to as ("claims"), arising out of bodily injury of any person, including death or property damage, but only to the extent that such claims which result in vicarious/derivative liability to the Indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees or volunteers.

5. This Agreement shall become effective upon filing with the Secretary of State.

6. This Agreement may be canceled in accordance with Arizona Revised Statutes § 38-511.

7. The provisions of Arizona Revised Statutes § 35-214 are applicable to this Agreement.

8. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

9. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 South 17th Avenue, Mail Drop 616E  
Phoenix, AZ 85007  
FAX: 602-712-7424

Town of Wickenburg  
Attn: Shane Dille, Town Manager  
155 North Tegner, Suite A  
Wickenburg, AZ 85390  
(602) 506-1222 x522

10. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable Federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

11. Non-Availability of Funds: Every payment obligation of the State and Town under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligations. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State and Town at the end of the period for which the funds are available. No liability shall accrue to the State or the Town in the event this provision is exercised as a result of termination under this paragraph.

12. Attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this Agreement and that the Agreement is in proper form.

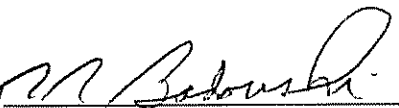
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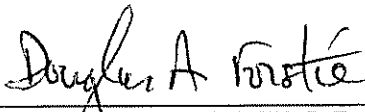
IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

TOWN OF WICKENBURG

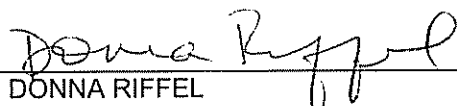
STATE OF ARIZONA

Department of Transportation

By   
\_\_\_\_\_  
RON BADOWSKI  
Mayor

By   
\_\_\_\_\_  
DOUGLAS A. FORSTIE, P.E.  
Deputy State Engineer, Operations

ATTEST

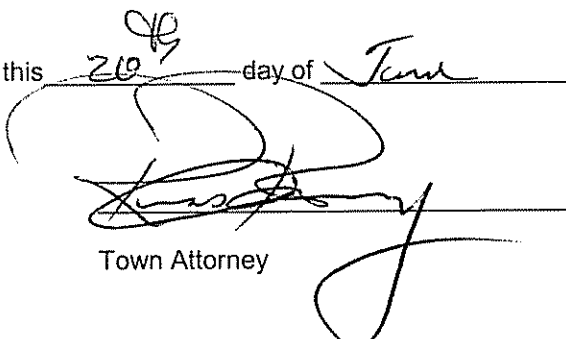
By   
\_\_\_\_\_  
DONNA RIFFEL  
Town Clerk

JPA 04-034

APPROVAL OF THE TOWN OF WICKENBURG

I have reviewed the above referenced intergovernmental Agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the TOWN OF WICKENBURG, an Agreement among public agencies which, has been reviewed pursuant to A.R.S. § 11-951 through § 11-954 and declare this Agreement to be in proper form and within the powers and authority granted to the TOWN under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this 20<sup>th</sup> day of June, 2005.

  
Town Attorney

RESOLUTION NO. 1480

(Exhibit "A")

A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF WICKENBURG, COUNTY OF MARICOPA, STATE OF ARIZONA, AGREEING TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF ARIZONA, DEPARTMENT OF TRANSPORTATION RELATIVE TO A ROADWAY WIDENING PROJECT ON US 60 EAST THROUGH WICKENBURG AND THE EXTENSION OF THE TOWN OF WICKENBURG'S WATER AND SEWER FACILITIES

WHEREAS, the Town of Wickenburg desires to extend its water and sewer facilities east along US 60/East Wickenburg Way; and,

WHEREAS, the State of Arizona, Department of Transportation has agreed to partner with the Town of Wickenburg and contribute twenty-five percent (25%) of the estimated construction cost of the Project not to exceed \$100,000; and,

WHEREAS, the State of Arizona, by and through its Department of Transportation, has agreed with the need for such extension of the Town's sewer and water facilities and has, therefore, resolved to enter into an Intergovernmental Agreement with the Town of Wickenburg to cause such design construction with the Town of Wickenburg; and,

WHEREAS, the Intergovernmental Agreement to which this Resolution is attached sets forth the terms, provisions, and conditions along with the rights and obligations of the respective parties

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF WICKENBURG, ARIZONA, as follows:

- 1 The Intergovernmental Agreement attached hereto and to which this Resolution will be denoted as Exhibit "A" thereto, be and is hereby authorized, approved, and adopted
- 2 The Common Council of the Town of Wickenburg authorizes the Mayor to enter into and otherwise execute the Intergovernmental Agreement
- 3 The Town of Wickenburg agrees, and does by these presences, agree to be bound by all terms, provisions, and conditions of the Intergovernmental Agreement and to accept any obligations imposed upon it and accept the benefits gained therefrom

PASSED AND ADOPTED by the Mayor and Common Council of the Town of Wickenburg, Arizona this 21<sup>st</sup> day of March 2005

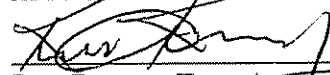
  
R R BADOWSKI, MAYOR

Date Signed: 4/4/05

ATTEST:

  
Donna Riffel, Town Clerk

APPROVED AS TO FORM:

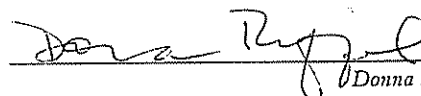
  
Russ Romney, Town Attorney  
Curtis, Goodwin, Sullivan, Udall & Schwab, P L C

Date Signed: 3/4/05

Number of Councilmembers Present: 6  
Number of Votes For: 6  
Number of Votes Against: 0  
Number of Abstentions: 0

CERTIFICATION

I HEREBY CERTIFY that the foregoing Resolution Number 1480 was duly passed and adopted by the Mayor and Common Council of the Town of Wickenburg, Arizona, at a regular meeting held on the 7<sup>th</sup> day of February 2005, and that a quorum was present at the meeting.

  
Donna Riffel, Town Clerk



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ARIZONA

TERRY GODDARD  
ATTORNEY GENERAL

CIVIL DIVISION  
TRANSPORTATION SECTION  
WRITER'S DIRECT LINE: 602.542.8837

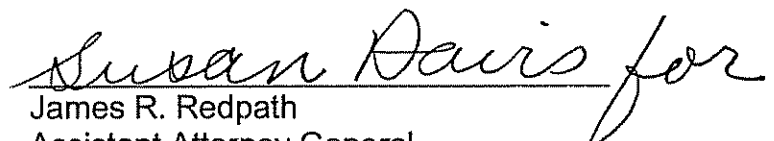
**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. KR04-1726TRN (**JPA 04-034**), an Agreement between public agencies, i.e., *The State of Arizona* and *Town of Wickenburg, Arizona*, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: June 30, 2005

TERRY GODDARD  
Attorney General

  
James R. Redpath  
Assistant Attorney General  
Transportation Section

SED:mjf  
Attachment  
912295